



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 2, 2004

Mr. Paul C. Sarahan  
Director  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

OR2004-0715

Dear Mr. Sarahan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 195336.

The Texas Commission on Environmental Quality (the "commission") received a request "to view all records pertaining to Waste Management Austin Community Landfill methane well exceedences from November 1993 to current." You state that the commission has made some responsive information available to the requestor and claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that this request seeks information that is subject to a previous ruling from this office. In Open Records Letter No. 2003-7635 (2003), we considered a request that the commission received for information regarding the violations and agreed order issued in relation to a specified permit of the Waste Management/Austin Community Landfill. You inform us that the "documents the [commission] is seeking to withhold in this request are the same documents that the [commission] was seeking to withhold in [the previous ruling request], and the [commission] believes the same exceptions still apply to those documents." You make the exact same arguments and representations with respect to this information as you did in the prior ruling request. We thus understand you to represent that the facts and circumstances surrounding that ruling have not changed. Therefore, the commission may rely on Open Records Letter No. 2003-7635 as a previous determination for the information at issue here. *See* Open Records Decision No. 673 at 6-7 (2001) (previous determination

exists where requested information is precisely same information addressed in prior attorney general ruling, ruling is addressed to same governmental body, ruling concludes that information is or is not excepted from disclosure, and law, facts, and circumstances on which ruling was based have not changed). As our decision on this issue is dispositive, we need not address your arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

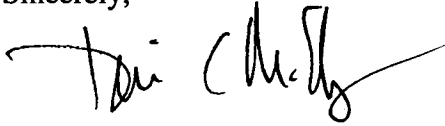
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Denis C. McElroy", written over a horizontal line.

Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/lmt

Ref: ID# 195336

Enc. Submitted documents

c: Ms. Joyce Thoresen  
3600 Carla Drive  
Austin, Texas 78754  
(w/o enclosures)